

United States
Circuit Court of Appeals
For the Ninth Circuit.

BURRELL JOHNSON,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Western District of Wash-
ington, Northern Division.

FILED
JAN 12 1923
F. D. MONCKTON,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Arraignment	3
Assignments of Errors	13
Bill of Exceptions	25
Certificate of Clerk U. S. District Court to Transcript of Record	51
Citation on Writ of Error.....	55
Hearing on Motion for New Trial.....	9
Indictment	2
Motion for New Trial	7
Names and Addresses of Counsel	1
Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond	16
Order Extending Time to and Including July 31, 1922, to Serve and File Bill of Excep- tions	21
Order Extending Time to and Including Au- gust 31, 1922, to File Bill of Exceptions and to File Record and Docket Cause....	22
Order Extending Time to and Including Sep- tember 30, 1922, to File Bill of Exceptions and to File Record and Docket Cause....	23

Index.	Page
Order Extending Time to and Including October 10, 1922, to File Bill of Exceptions and to File Record and Docket Cause.....	24
Order Transmitting Original Exhibits to Circuit Court of Appeals.....	48
Petition for Writ of Error	11
Plea	4
Praecept for Transcript of Record.....	49
Sentence	10
Supersedeas Bond	17
TESTIMONY ON BEHALF OF THE GOVERNMENT:	
CRABTREE, WILFRED H.....	25
Cross-examination	27
HOLMES, Mrs. EDNA (In Rebuttal)...	44
Cross-examination	45
READ, L. S.....	28
Cross-examination	29
Redirect Examination	30
SMITH, JOSEPH P.....	32
Cross-examination	33
Redirect Examination	33
WORSHAM, W. E.....	31
Cross-examination	31
TESTIMONY ON BEHALF OF DEFENDANT:	
FORREST, WILLIAM L.....	41
JOHNSON, BURRELL	34
Cross-examination	38
Redirect Examination	39
Recalled	45

Index.

Page

TESTIMONY ON BEHALF OF DEFEND-

ANT—Continued:

JOHNSON, Mrs. DOROTHY	41
Cross-examination	42
Redirect Examination	43
Recross-examination	43
JOHNSON, SCHUYLER C.....	43
Cross-examination	44
ROMANO, E. J.....	40
Cross-examination	40
Redirect Examination	41
WORSHAM, W. E.....	44
Trial	4
Trial (Resumed)	4
Verdict	7
Writ of Error	53

Names and Addresses of Counsel.

R. J. MEAKIM, Esq., Attorney for Plaintiff in Error,

736 New York Block, Seattle, Washington.

THOMAS P. REVELLE, Esq., United States Attorney, Attorney for Defendant in Error,

310 Federal Building, Seattle, Washington.

JUDSON F. FALKNOR, Esq., Assistant United States Attorney, Attorney for Defendant in Error,

310 Federal Building, Seattle, Washington.

[1*]

United States District Court, Western District of Washington, Northern Division.

No. 6630.

November, 1921, Term.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Indictment.

SS. Violation of Act of Oct. 17, 1919 (National Motor Vehicle Theft Act).

United States of America,
Western District of Washington,
Northern Division.

The grand jurors of the United States of Amer-

*Page-number appearing at foot of page of original certified Transcript of Record.

ica, being duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That Burrell Johnson, on or about the fifteenth day of February, in the year of our Lord one thousand nine hundred and twenty-two, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court then and there being, did then and there knowingly, wilfully, unlawfully and feloniously, transport, and cause to be transported, in interstate commerce, from the City of Boston, in the State of Massachusetts, to the City of Seattle, in the State of Washington, in the Northern Division of the Western District of Washington, a certain motor vehicle, to wit, a [2] certain "Nash" automobile bearing serial number 191476, motor number 82424, body number 2069, Generator number 1228857, starter number 1228762, battery number 5641126, a more particular description of said automobile being to the grand jurors unknown, the said Burrell Johnson then and there well knowing that the said motor vehicle had been theretofore stolen from the true and lawful owner thereof; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,

United States Attorney.

JUDSON F. FALKNOR,

Assistant United States Attorney.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury, and Filed in the U. S. District Court March 21, 1922. F. M. Harshberger, Clerk. [3]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
BURRELL JOHNSON,
Defendant.

Arraignment.

Now on this 27th day of March, 1922, the above defendant comes into open court for arraignment accompanied by his attorney R. J. Meakim and says that his true name is Burrell Johnson. Whereupon he is allowed one week in which to plead.

Journal #10, page 85. [4]

United States District Court, Western District of
Washington, Northern Division.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
BURRELL JOHNSON,
Defendant.

Plea.

Now on this 3d day of April, 1922, the above defendant comes into open court accompanied by his attorney, R. J. Meakim, and here and now enters his plea of not guilty.

Journal #10, page 95. [5]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Trial.

Now on this 5th day of June, 1922, this cause comes on for trial with defendant Johnson present accompanied by his attorney R. J. Meakim and J. F. Falknor present for the Government. Whereupon all parties being present a jury is empanelled and sworn as follows: F. C. Doolittle, Charles F. Schell, Joseph H. Sargent, Louis Rubenstein, Earl W. Raymond, Harry B. Sawyer, J. O. Edwards, H. R. Gale, L. H. Love, Charles C. Querin, Leslie L. Peters, and W. A. Crittenden. Opening statement is made to the jury for the government by J. F. Falknor. Government witnesses are sworn

and examined as follows: H. H. Crabtree, L. S. Reed, W. E. Worsham and J. P. Smith. Government Exhibits Numbers 1, 2, 3 and 4 are introduced as evidence. Government rests. Defendant moves for a suppression of evidence and to strike the testimony of Government's witnesses. Said motion is denied and exception allowed. Defendant's witnesses are sworn and examined as follows: Burrell Johnson, E. J. Romono, Wm. L. Meyers, Dorothy Johnson, Silas D. Johnson and W. E. Worsham (recalled). Defendant's Exhibits "A" and "B" are introduced as evidence. Defendant rests. Government's witness in rebuttal is Edna Holmes. Government rests.

Journal #10, page 204. [6]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Trial (Resumed).

Now on this 6th day of June, 1922, the above-entitled defendant is present in court and attorneys for both sides being present, and all jurors present, trial of this cause is resumed. Defendant's witness

Burrell Johnson is recalled. Defendant's Exhibit "C" is introduced as evidence. Whereupon motion is made by the defendant for a directed verdict of not guilty on the ground of the insufficiency of the Government's evidence. Said motion is denied and exception allowed. This cause is now argued to the jury by both sides and jury after being instructed by the Court, retires for deliberation. Jury again comes into open court at 2:30 P. M. and all parties are present, likewise all jurors, a verdict of guilty is returned and read as follows: "We, the jury in the above-entitled cause, find the defendant Burrell Johnson is guilty as charged in the indictment herein, Louis Rubenstein, foreman." Verdict is ordered filed and jury discharged from further consideration of the case. Defendant moves for arrest of judgment and for a new trial. Sentence and disposition of above motions are continued to June 12, 1922, and defendant is allowed to go on present bail.

Journal #10, page 205. [7]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant Burrell Johnson is guilty, as charged in the indictment herein.

LOUIS RUBENSTEIN,
Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jun. 6, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [8]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

BURRELL JOHNSON,
Defendant.

Motion for New Trial.

Comes now Burrell Johnson, defendant herein, by his attorney, R. J. Meakim and moves the Court for an order setting aside the verdict of the jury heretofore rendered herein and granting the defendant a new trial for the reasons and upon the grounds:

1. That the verdict is contrary to the law of the case.

2. That the verdict is not supported by any evidence in the case.

3. Surprise that ordinary prudence could not have guarded against.

4. The Court, upon the trial of the case admitted incompetent evidence offered by the United States and refused to admit competent evidence offered by the defendant.

5. The Court erred in refusing to direct a verdict of Not Guilty at the close of the Government's case.

5. The Court erred in refusing to direct a verdict of Not Guilty at the close of all the evidence.

R. J. MEAKIM,

Attorney for Defendant.

Received a copy of the within Motion this 12th day of June, 1922.

THOS. P. REVELLE,

Attorney for Plaintiff.

By E. D. DUTTON.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. June 12, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

United States District Court, Western District of
Washington, Northern Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BURRELL JOHNSON,
Defendant.

Hearing on Motion for New Trial.

Now on this 16th day of June, 1922, this cause comes on for hearing on motion for new trial with R. J. Meakim present for defendant and J. F. Falknor for Government. Said motion is argued and denied with exception allowed. Government moves for judgment and sentence. Said motion is granted at this time and sentence is passed.

Journal No. 10, page 221. [10]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BURRELL JOHNSON,
Defendant.

Sentence.

Now on this 15th day of June, 1922, the said defendant Burrell Johnson comes into open court for sentence and being informed by the Court of the charges herein against him, and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises it is considered ordered and adjudged by the Court that the defendant is guilty of violating the Act of October 17, 1919, National Vehicle Theft Act, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States for the term of two years at hard labor. And the said defendant is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 3, page 290. [11]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Petition for Writ of Error.

In the Above-entitled Court and to the Honorable
FRANK H. RUDKIN, Judge Thereof:

Comes now the above-named defendant, Burrell Johnson, by his attorney and counsel, respectfully shows that on the 6th day of June, 1922, a jury in the above-entitled court and caused returned a verdict finding the defendant above named guilty of the charge in count one of the indictment contained in his indictment which was heretofore filed in the above-entitled court and cause and thereafter, and within the time limited by law, under rules and order of this court, said defendant moved for a new trial, said motion was by the court overruled and exception thereto allowed; and likewise within said time filed his motion for arrest of judgment, and which was by the Court overruled and to which an exception was allowed; and thereafter, on the 16th day of June, 1922, said defendant was, by order and judgment and sentence of the above-entitled Court,

in said cause, sentenced to serve a term of two years in the United States penitentiary at McNeils Island, Washington.

And your petitioner, feeling himself aggrieved by this verdict and the judgment and sentence of the Court, entered herein as aforesaid, and by the orders and ruling of this Court, and proceedings in said cause, now herewith petitions this [12] Court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the proceedings of said Court made and provided, to the end that said proceedings as herein recited, and as more fully set forth in the assignment of errors presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by the Circuit Court of Appeals corrected, and for that purpose a writ of error thereon should issue as by the law and the rulings of the Court provided, and wherefor premises considered, your petitioner prays that a writ of error issue to the end that said proceedings of the District Court of the United States for the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned and presented herewith, and that pending the final termination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed and that

pending such final determination, said defendant be admitted to bail.

R. J. MEAKIM,
Attorney for Petitioner, Burrell Johnson, Plaintiff
in Error.

Acceptance of service of within petition for writ of error acknowledged this 16th day of June, 1922.

THOS. R. REVELLE,

U. S. Attorney.

By E. D. DUTTON.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 16, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [3]

In the United States District Court, Western District of Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Assignment of Errors.

Comes now the above-named defendant, Burrell Johnson, and in connection with his petition for writ of error in this case submitted and filed, herewith assigns the following errors, which the defendant avers and says occurred in the proceedings and

at the trial in the above-entitled cause, in the above-entitled court, upon which he relies to reverse, set aside and correct the judgment and sentence entered herein. He says that there is manifest error appearing upon the face of the records and in the proceedings in this:

1. The defendant at the close of the Government's evidence moved the Court to direct the jury to return a verdict of "not guilty," which motion was denied by the Court, and to which ruling the defendant then and there excepted for the reason and upon the ground that no crime, misdemeanor or offense under the laws and statutes of the United States had been proven against the defendant, and because the offense charged in the indictment had not been proven; which exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon the motion.

2. Defendant again at the close of all the evidence in the case moved the Court to direct the jury to return a verdict of "not guilty," which motion was denied by the Court, and to [14] which ruling the defendant then and there excepted for the reason and upon the ground that no crime, misdemeanor or offense under the laws and statutes of the United States had been proven against the defendant, and because the offense charged in the indictment had not been proven; which exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon said motion.

3. Thereafter and within the time limited by law and the rulings and orders of the Court, the de-

fendant moved the Court for an order setting aside the verdict of the jury and granting to him a new trial, which motion was denied by the Court, to which ruling of the Court the defendant then and there duly excepted and the exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon said motion.

4. The Court thereafter entered judgment and sentence against said defendant upon the verdict of "guilty" rendered upon said indictment, to which ruling and judgment and sentence the defendant excepted, which exception was by the Court allowed; and now the defendant assigns as error the court so entering judgment and sentence upon said verdict.

And as to each and every assignment of error as aforesaid defendant says that at the time of making the order or ruling of the Court complained of, the defendant duly asked and was allowed an exception to the ruling and the order of the Court.

R. J. MEAKIN,

Attorney for Defendant.

Service of foregoing assignment of errors received and copy thereof admitted this 16th day of June, 1922.

THOS. P. REVELLE,

U. S. District Attorney.

By E. D. DUTTON. [15]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 16, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [16]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

**Order Allowing Writ of Error and Fixing Amount
of Supersedeas Bond.**

A writ of error is granted herein this 16th day of
June, 1922; and it is further

ORDERED that the said defendant be admitted
to bail and that the amount of supersedeas bond to
be filed by said defendant be fixed in the sum of
fifteen hundred dollars (\$1500.00).

AND IT IS FURTHER ORDERED that upon
said defendant, Burrell Johnson, filing his bond in
the aforesaid sum in due form to be approved by
the clerk of this court, he shall be released from
custody pending the determination of the writ of
error herein assigned.

Done in open court this 16th day of June, 1922.

JEREMIAH NETERER,

Judge.

Service of the foregoing order, and receipt of
copy thereof admitted this 16th day of June, 1922.

THOS. P. REVELLE,

U. S. District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 16, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [17]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, Burrell Johnson, as principal, and Harold B. Taylor unmarried and George R. Ford of Seattle, King County, Washington, as sureties, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of fifteen hundred dollars (\$1500.00), for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the above-named defendant, Burrill Johnson, was on the 16th day of June, 1922, sentenced in the above-entitled cause to serve two years in the

U. S. Penitentiary at McNeil Island, Washington for violation of the act of October 17, 1919.

And, whereas, the said defendant has sued out a writ of error from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit;

And, whereas, the above-entitled Court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of fifteen hundred dollars, (\$1500.00). [18]

Now, therefore, if the said defendant, Burrill Johnson, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made, in the premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall pursuant to any order issued by said District Court surrender himself and obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court,

then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 16 day of June, 1922.

BURRILL JOHNSON.

HAROLD B. TAYLOR.

GEORGE R. FORD. [19]

United States of America,
State of Washington,
County of King,—ss.

George R. Ford, unmarried man, being first duly sworn, each for himself and not one for the other, on oath, says:

I am a resident of the State of Washington, over the age of twenty-one years, and not an attorney or counselor at law, sheriff, clerk of the Superior Court or other *office* of such court, or of any court; that I am worth, over and above all debts and liabilities, and exclusive of property exempt from execution, in real estate situate within King County, State of Washington, as follows: Lots 18, 19, 20, 21, Block 21, Replat of Blocks 5, 6, 7, 8, Factoria Add King County, Wash.

GEORGE R. FORD.

Subscribed and sworn to before me this 16th day of June, 1922.

[U. S. District Court Seal]

FRANK L. CROSBY, Jr.,

Deputy Clerk U. S. District Court, Western District
of Washington. [20]

United States of America,
State of Washington,
County of King,—ss.

Harold B. Taylor, unmarried, being first duly sworn, each for himself and not for the other on oath says:

I am a resident of the State of Washington, over the age of twenty-one years and not an attorney or counselor at law, sheriff, clerk of the Superior Court of other *office* of such court, or of any court; that I am worth, over and above all debts and liabilities and exclusive of property exempt from execution, in real estate situate within King County, State of Washington, as follows: Lot 16, Block 11 Cowan's University Addition to Seattle, Wn. and Tract 1, Block 14 of 1st Addition to Lake Forest Park; both free from incumbrance.

HAROLD B. TAYLOR.

Subscribed and sworn to before me this 16th day of June, 1922.

[U. S. District Court Seal]

FRANK L. CROSBY, Jr.,
Deputy Clerk U. S. District Court, Western District
of Washington.

Approved the 16th day of June, 1922.

NETERER,
Judge.

O. K.—J. F. FALKNOR,
Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 16, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

**Order Extending Time to and Including July 31,
1922, to Serve and File Bill of Exceptions.**

For good cause now shown, it is ORDERED that the time within which the defendant shall serve and file his proposed bill of exceptions in the above-entitled cause be and the same hereby is extended to and including the 31st day of July, 1922.

NETERER,

United States District Judge.

O. K.—J. F. FALKNOR,

Asst. U. S. Atty.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 26, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BURRELL JOHNSON,
Defendant.

**Order Extending Time to and Including August 31,
1922, to File Bill of Exceptions and to File
Record and Docket Cause.**

For good cause shown it is ORDERED, that the time within which the defendant shall serve and file his proposed bill of exceptions, and serve and file his record in the above-entitled cause in the Circuit Court of Appeals be and the same is hereby extended to and including the 31st day of August, 1922.

Done in open court this 31st day of July, 1922.

JEREMIAH NETERER,

United States District Judge.

O. K.—THOS. P. REVELLE,

JUDSON F. FALKNOR,

U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 31, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

United States District Court for the Western District of Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Order Extending Time to and Including September 30, 1922, to File Bill of Exceptions and to File Record and Docket Cause.

For good cause shown it is ORDERED that the time within which the defendant shall serve and file his proposed bill of exceptions, and serve and file his record in the above-entitled cause in the Circuit Court of Appeals, be and the same is hereby extended to and including the 30 day of September, 1922.

Done in open court this 11th day of September, 1922.

JEREMIAH NETERER,
United States District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 11, 1922. F. M. Harshberger, Clerk.
[24]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BURRELL JOHNSON,
Defendant.

**Order Extending Time to and Including October
10, 1922, to File Bill of Exceptions and to File
Record and Docket Cause.**

For good cause shown it is ORDERED, that the time within which the defendant shall serve and file his proposed bill of exceptions and serve and file his record in the above-entitled cause in the Circuit Court of Appeals be and the same is hereby extended to and including the 10th day of October, 1922.

Done in open court this 27 day of September, 1922.

JEREMIAH NETERER,
United States District Judge.

O. K.—JOHN A. FRATER,
Asst. U. S. Attorney.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 27, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [25]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that this cause came on
regularly to be heard on this, the 5th day of June,
1922, before the Hon. Frank H. Rudkin, the plain-
tiff appearing by Judson F. Falknor, Esq., Assistant
United States Attorney; and the defendant appear-
ing by R. J. Meakim, Esq.; whereupon the following
testimony was offered and proceedings had, to wit:
[26]

Upon a jury being regularly and duly empaneled
and sworn to try said cause, and the United States
Attorney having made his opening statement, the
following proceedings were had:

**Testimony of Wilfred H. Crabtree, for the
Government.**

WILFRED H. CRABTREE, called as a witness
on behalf of the Government, and being first duly
sworn, testified as follows:

Direct Examination.

(By Mr. FALKNOR.)

My name is Wilfred H. Crabtree and I am a

(Testimony of Wilfred H. Crabtree.)

physician practicing in Boston with office address at 205 Beacon Street, in the residential district of that city. I bought this Nash auto from the Nash agency in Boston on June 24, 1921, with engine number 82424 and I have the original bill of sale.

(The bill of sale was thereupon admitted as Government's Exhibit "A.") [27]

I left the machine in front of my office about three o'clock in the afternoon of November 10, 1921, and it was gone at a quarter of six the same afternoon when I went after it and I did not see the car again until this morning at the South End Garage at Seattle, where I was taken by Mr. Read of the Department of Justice and Mr. Smith of the Seattle City Police. The car I saw this morning at the South End Garage at Seattle is my car. I can positively identify it by certain characteristics on my car which are as follows: The standards of the windshield have been raised on each side by putting a brass washer on either side. This was done by myself at the Nash Service Station at Boston and I find this to be the condition on the car I saw this morning. Also my car had some cement put around the hot air pipe right over the exhaust of the carburetor, and that is the same as the car I saw in Seattle this morning. Also on my car, the left front curtain had two holes in it in the front. I found the curtain on the car I saw this morning to be in the same condition and I have that curtain with me.

(Curtain received in evidence, marked Government's Exhibit No. 2.)

(Testimony of Wilfred H. Crabtree.)

I had a Ford oil can on my car in Boston and I found a Ford oil can on the car this morning. (Witness identifies an oil can as the can he found on the car at Seattle.)

(Oil can received in evidence, marked Government's Exhibit No. 3.)

A few days before November 10, 1921, when I stopped at the office to go into my office, I noticed a young man standing on the corner. My office building is the next building to the corner; he was standing on the corner of the street and I thought at the time he looked as though he had no business around there. He was a smooth-shaven young [28] man along about twenty-five, rather heavy shoulders, and he wore a gray suit and a cap. I cannot swear that the defendant is the man, but I have the feeling that I have seen the defendant before. This is as much as I can say on that. I am not positive on that and don't care to swear that it is the same man.

Cross-examination.

(By Mr. MEAKIM.)

The reason I think it was stolen November 10th is because that is the day I left it in front of the office and went out and found it gone. I remember it was November 10th just as you remember any important date. That was a matter of importance. I am a married man and no other member of my family drives the car. I have no reason to believe that it was stolen except that it was not in front of the building *when* I left it.

(Testimony of L. S. Read.)

Q. Now, you refuse to identify him (the defendant), do you? A. Yes, sir.

Testimony of L. S. Read, for the Government.

L. S. READ, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FALKNOR.)

I am a special agent of the Department of Justice. I was looking for a stolen car and on February 15th I took the defendant to the Bureau office and questioned him. Officers Worsham and Smith were with me. The defendant had a Nash car at that time. I had no warrant. He stated that he and his wife left Seattle September 27th, 1921, in a 1918 Studebaker and drove east, visiting Boston, Chicago and back through Miami. He stated that he had been in Boston in the early [29] part of November and came back from Boston to Seattle. I found him in possession of a Nash automobile. I examined his Nash car and found the serial number to be 193301 and the motor number was 85678; these numbers were on detachable plates on the motor of the machine. I, accompanied by the defendant and Mr. Smith, visited the local Nash office and disassembled the motor to ascertain what the secret number was, and found the true number to be 82424. The defendant, responding to my question, said he had had a bill of sale but had lost it and did not remember the name of the man from whom he bought

(Testimony of L. S. Read.)

the Nash, nor did he remember the locality where he had purchased the car.

Cross-examination.

(By Mr. MEAKIM.)

The defendant told me he bought the car in Pawtucket, Rhode Island; I took the machine from him several days later; I never arrested him; the machine was placed in Police Headquarters by Officer Smith and the defendant and myself were with him and the defendant was not under arrest. I met the defendant at the Times office and requested him to come to the Bureau office on February 15th and he stayed about forty-five minutes. He drove us, at my request, to Police Headquarters where I raised the hood and looked at the numbers and saw that they had been "jimmied." I released the car to him and the following day he drove us to the Nash people and I found the numbers as I have said. We then went to Police Headquarters and put the car in. We discovered the correct motor number to be 82424, and that is on the car yet; the serial number is 193301, shown on an aluminum plate, readily seen when the hood is lifted and the other number can only be found by taking down some of the parts. The number looked like it had been pried off; it is put on with brass tacks, and was [30] on it this morning and is in the same condition as when I first saw it and was never loosened by me; the defendant went to the police station with me twice, and visited my office and the Nash office at least once. The defend-

(Testimony of L. S. Read.)

ant, after the car was taken from him, visited my office the following day and again on the following Monday. He said he got the car in Pawtucket, R. I., and gave his Studebaker and \$300.00 for it. I have not been able to find the Studebaker, although I have made every possible effort to locate it. A license for the Nash car was obtained in Rhode Island on November 8th, two days before the car was stolen, and the number now on the car was given in the application. I did not notice what license was on the car when I first saw it when he told me had just returned from his trip through Los Angeles and Portland. I checked the license at the City-County Building, but I could not tell what license he has as he owned so many automobiles. I did not investigate whether he had a California license; I tried to locate this Studebaker car, but have not been able to do so, although I have tried to ascertain from the directors of Motor Vehicle Licenses in about fourteen States, trying to locate this Studebaker car; also some telegrams to Pawtucket trying to locate it, but have been unable to do so.

Redirect Examination.

(By Mr. FALKNOR.)

I procured a certified copy of the license on the Nash car issued in Rhode Island.

(Certified copy of license received and marked Plaintiff's Exhibit No. 4.)

Testimony of W. E. Worsham, for the Government.

W. E. WORSHAM, called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows: [31]

Direct Examination.

(By Mr. FALKNOR.)

I was present in Mr. Read's office when Mr. Johnson was interrogated on February 15th; he told us he left Seattle in September, 1921, with his wife and went East through New York State and said he had been in Boston along in November, I believe; he returned through Miami, Florida, the southern route to California, stopped in Los Angeles a while, then through Frisco and back to Seattle; he said he had lost his bill of sale and he could not remember the street number of the man from whom he had bought it; he was apprehended with this particular Nash car in his possession.

Cross-examination.

(By Mr. MEAKIM.)

The car is now in the South End Garage; we took it there from headquarters where it was brought by Detective Smith and Mr. Read a day or two following our conversation at the Department of Justice office. I believe Sergeant Witske and Detective Smith arrested him; he said he got the car in Pawtucket, R. I., in November. He went to Washington, D. C., and then to Miami, Florida; he said he had been picked up and investigated over this car in Miami, Florida; I know this was true as we

(Testimony of W. E. Worsham.)

got some wires from the Chief of Police down there regarding them; we wired them he had no Nash car here; I saw the car several times after it had been taken away from the boy and the engine number was in plain sight when the hood was lifted; the serial plates—motor plates—had been changed on that car; the number had been tampered with, the plate had been changed; the plates looked like they had been jimmied and they are not the same Nash screws that are originally put in; they show evidence of being taken off and put on. When we were talking to him he said the ownership [32] of the car had been investigated in Miami, Florida, and that the police had released the car to him. I am a city detective and have been in the automobile detail for five years; I am very familiar with stolen cars and the methods used to hide them; there was nothing suspicious about the car any more than the number plates showed they had been tampered with; there were different screws holding them on than the Nash puts on; it had a Nash number and the figures looked all right, although they looked as though they had been detached and placed on.

Testimony of Joseph P. Smith, for the Government.

JOSEPH P. SMITH, called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FALKNOR.)

I am a city detective and was present when the

(Testimony of Joseph P. Smith.)

defendant was asked about this car; he said he went east in September and was in Boston early in November, then went to Miami and back through Los Angeles and thence to Seattle. He had this Nash car and said he had lost or misplaced the bill of sale; he did not remember the name of the man from whom he purchased it or his street number and we all went to the Nash Garage with the car and found the true engine number to be 82424. The numbers on the outside of the motor looked as though they had been changed.

Cross-examination.

(By Mr. MEAKIM.)

The rivets had been pried off and replaced and the plates were loose when we first looked at the car; the number is on an aluminum strip and the rivets appear to have been taken out and replaced. I took the defendant [33] down to the station; Mr. Read was with me and put the car in the locker; aside from the fact that the number was hanging by one end when I saw it, there is nothing else that is suspicious or to be suspicious about. I never had but one conversation with the defendant.

Redirect Examination.

(By Mr. FALKNOR.)

The defendant was arrested by a deputy marshal. Whereupon the Government rested.

Whereupon the defendant challenged the sufficiency of the Government's evidence, and moved the Court to instruct the jury to return a verdict of not

(Testimony of Burrell Johnson.)

guilty, for the reason and upon the ground that the offense charged in the indictment had not been proven, and no sufficient evidence thereof had been introduced to warrant giving the case to the jury. The defendant further moved to strike the testimony and the exhibits for the reason that the same were without warrant in law and against the statute on Searches and Seizures. The defendant further moved on the ground that the Government had failed to establish that the car was stolen and failed to show that the defendant knew that the car was stolen and to establish that it was stolen at all.

The motion was denied. Whereupon the defendant duly excepted to the ruling of the Court and his exception was by the Court allowed.

Thereupon the defendant's opening statements to the jury having been made by his counsel, the following testimony was [34] introduced on behalf of the defense.

Testimony of Burrell Johnson, in His Own Behalf.

BURRELL JOHNSON, the defendant, being first duly sworn, testified in his own behalf as follows:

Direct Examination.

(By Mr. MEAKIM.)

I am the defendant and I started east in September, 1921, driving a 7-passenger Studebaker, going through Chicago, Cleveland, Boston, Providence, Miami, Los Angeles and reached Seattle February 14, 1922. I am and have been a newspaper

(Testimony of Burrell Johnson.)

distributor for the Times and P. I. for five years and am a married man and my wife was with me on the trip. I contemplated trading my car and read the ads in different cities and tried to make a trade in Cleveland, Ohio. I arrived in Providence, R. I., on the night of November 7th and left Boston on the 7th and was there about ten days previous; stayed in Providence the night of November 7th; I left Providence about noon on November 8th and went to visit an aunt and came back through Providence again on Saturday, November 12th, on Tuesday, November 8th I saw an ad in either the evening or morning paper; I read them both, and saw a car advertised, giving an address in Pawtucket, and I went out there and looked it over and contemplated making a trade, and finally got to an agreement where I was to pay \$300.00 difference and give my '18 seven-passenger Studebaker for an early '21 Nash car, I believe it was, and I went down to the State House in Providence—Pawtucket and Providence, I explained to you was similar, they run together, and we went down there to the State House in Providence and applied for a license; I was to come back in a couple of days and get the car provided I got the license; they issued a license and I did that. I applied for the license about noon time at the State House with the man I was trading with. I deposited \$50.00 with him. This was the office of the State Board of Public Roads, State House, [35] Providence, Rhode Island; I filled out the blank and I was told that they had to mail me a registration

(Testimony of Burrell Johnson.)

card; that was the same as the State of Washington, a post card or a paper certificate showing they issued a license; they don't give them to you, they have to mail it to you, so I had it mailed to me in Pawtucket. The envelope that I now have here is the identical envelope in which the license was mailed to me. I carried the certificate to California and then took out a California 1922 license. I agreed to trade on condition that I got the certificate and ordered it sent to Pawtucket, General Delivery, as I used the general delivery in all cities. I then went to Leominster, in North Central Mass., to see my aunt and remained four days, then went back to Pawtucket to make the deal; I got the license at the postoffice and went over to see the car and see it was as it was, complete tools and tires were good, and then I exchanged my stuff from the Studebaker and put them in there, and went in with him and made out a bill of sale to each other; I turned my car over to him and he turned his car over to me, and then we went down to Providence and went to Hartford that night; there was nothing particularly interesting in Providence; I have an aunt that lives in Hartford and we went over there and stayed there for a while. I bought and paid for the car at the owner's house, I think in Pawtucket; it seems to be nearest the business district of Pawtucket although Pawtucket and Providence run together; it was in the residential district and when I closed the deal my wife was with me. Then we went on through New York and south; I had

(Testimony of Burrell Johnson.)

this car repaired by Nash agencies in Washington, D. C., Jacksonville, St. Augustine, Florida, El Paso and Los Angeles. I was in New York eight days and the car was in dead storage there one week. I was in Washington, D. C., one week. I was arrested in Miami for assault while working on a newspaper and the police took the car and examined it and returned it. I [36] went to California, arriving January 15th and got a tourist permit in exchange for my Rhode Island license. The day I got back I was in the "Times" office and Mr. Read came in and asked a few questions about my cars and I took him out and showed him the Nash; he asked me to see him the next morning and I did and he and two officers asked me about the trip and then I drove them to the Nash company and they asked me to drive to the police station and then they took the car away from me; that was the last I saw of the car. The number was on an aluminum plate and was not hanging by one screw and was in good condition and there was nothing unusual about it. I think the police at Miami took the number off at that time to look underneath it to see if there was another number and then put it back on again. The bill of sale was made in the house of the man I bought the car from. I made him one and he made me one and I gave him the balance of the money. I don't remember the street number, there are so many numbers there. I don't know the exact address. I did not know that the car was stolen and I do not believe so now and I never concealed it;

(Testimony of Burrell Johnson.)

I never had a gray suit of clothes and I had only a dark suit while making this trip.

Cross-examination.

(By Mr. FALKNOR.)

I arrived in Boston the latter part of October and was in Providence November 7th and Pawtucket November 8th; I read the paper November 7th and first saw the machine November 8th and applied for the license November 8th but did not receive it at that time. I am not well acquainted around Boston, I lived there when I was nine years old and have never been back there since. I don't know anyone in Boston but have relatives in New England. Pawtucket is probably 70. miles from Boston. I started negotiations for the car November 8th and got the bill of sale November 12th; the bill of sale is either mislaid or lost. I put it in some of my clothes or some of my suit cases, when I got the car, I believe in my pocket [37] and I never had occasion to look for it again until I was down in Miami, and at that time in Miami my wife went with the officers over to the house and looked in the suit cases to find it, and they could not find it. I have had several cars and usually put the bill of sale in my desk. I don't remember the man's name but would know it if I heard it; he was about my build, perhaps a little stouter, I should judge about 35 years old; I don't know his business and his hair was either brown or dark, it was not light and he was clean shaven. I saw him twice and the car twice. The first time November 8th

(Testimony of Burrell Johnson.)

when I agreed to buy it provided they issued me a license and I paid \$50.00 at that time and \$250.00 later. I had the \$300.00 with me and it was part of my earnings. I went to Providence in the middle of the afternoon; I tried to trade my car in Cleveland. The Nash was a 1920 or '21; my car was 1918 Studebaker worth at least \$1000.00, the Nash was worth about \$900.00. The man lived in the section between Pawtucket and Providence and not on the main street where the car line is; I believe he was a married man as I saw a woman around the house. I did not steal the plates and did not put them on the car and it was not loose when I got here. It was taken off in Miami. I was arrested in Miami, selling papers on the street after an altercation with a newsboy. The police investigated the car. I have three cars; a Studebaker, an Overland and a Dodge used in distributing newspapers; I now have a 1918 Studebaker. I have had 10 or 12 cars and used them every day in my business.

Redirect Examination.

(By Mr. MEAKIM.)

In New York some of my tools were missing and the police looked over the car. The money I had was sent from Seattle by my father and was my own money.

Testimony of E. J. Romano, for Defendant.

E. J. ROMANO, called as a witness on behalf of the defendant, being first duly sworn, testified as follows: [38]

Direct Examination.

(By Mr. MEAKIM.)

I have been in the auto repair business 18 years and am familiar with Nash cars. I examined this Nash car on March 16th and examined the numbers. The number I saw was on the starter, it was loose, at that time at one end, otherwise it didn't seem to have been molested with in any way; the numbers seemed to be very clear; I could not see where they used any chisel on it to put new numbers on it. It is an aluminum plate attached with rivets and it showed no evidence of having been injured or tampered with that I could see. I have sold a number of used cars and examined and used the Nash cars; I have not sold any Nash cars. I know the value of used Nash cars, Cars are cheaper in the east than here because of a greater field and less freight. I did not see anything about this car to make anyone suspicious.

Cross-examination.

(By Mr. FALKNOR.)

Freight from Detroit to Boston is less than to Seattle; I sell a number of cars; it was dark when I examined the car; I could not tell that it was a stolen car.

(Testimony of E. J. Romano.)

Redirect Examination.

(By Mr. MEAKIM.)

I held an electric light in my hand when I examined the car.

Testimony of William L. Forrest, for Defendant.

WILLIAM L. FORREST, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MEAKIM.)

Until a year ago I was circulation manager of the P. I. for the previous three years; the defendant was under me as district manager for Capitol Hill; he handled and sold papers for us, handling the cash and paying us each month for the papers sold; probably [39] in the neighborhood of four or five hundred dollars a month. His general reputation in the community is very good.

Testimony of Mrs. Dorothy Johnson, for Defendant.

Mrs. DOROTHY JOHNSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MEAKIM.)

I am the wife of the defendant and was with him on the trip; we arrived in Boston the latter part of October and remained there until about the 7th and then went to Pawtucket and Providence and arrived on the 7th of November in the evening, left the next afternoon and went to Leominster,

(Testimony of Mrs. Dorothy Johnson.)

Mass., to visit relatives and stayed four days, then went back to Province and Pawtucket. My husband went into this man's house and gave him the bill of sale, I sat in the Studebaker; my husband came out; I never heard anything; I saw the house, and my husband went in, and he came out and drove the car around the block, the Nash, and the other man drove the Studebaker around the block. We went back through Providence to Hartford that night. We stopped at several Nash garages. In Miami I went down to pay his fine driving the Nash car.

"Q. What happened in Miami, Florida, with reference to this machine?

Mr. FALKNOR.—I object to this as immaterial.

The COURT.—The question whether or not this car was stolen is the issue; whether he knew it or the Chief of Police down in Florida; I will sustain the objection.

Mr. MEAKIM.—You sustain the objection as to what occurred in Miami?

The COURT.—Yes."

My husband had no gray suit this trip; he wore corduroy trousers and puttees most of the time.

Cross-examination.

(By Mr. FALKNOR.)

My husband wore a cap; I saw the man once who sold the Nash; he [40] came out while I sat in the car; he was forty at least, smooth shaven, dark hair, black derby hat. I saw a lady around his house. I know Mrs. Holmes in Seattle, she is a friend of mine. I put the money I got from my

(Testimony of Mrs. Dorothy Johnson.)

father in with my husband's money. I don't know how much he put in to buy the car. I had \$300.00; his father and mother sent him money all the time while we were gone. I gave it to him in Kentucky; I don't know when we spent it. I did not tell Mrs. Holmes that the money from my father was used to buy the car.

Redirect Examination.

(By Mr. MEAKIM.)

My husband got money from him in Chicago, some in the east and some in New York. He carried the money and paid the bills.

Recross-examination.

(By Mr. FALKNOR.)

I took money down in Miami and paid his fine, \$4.85 more than he had with him.

Testimony of Schuyler C. Johnson, for Defendant.

SCHUYLER C. JOHNSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MEAKIM.)

I am the father of the defendant; we sent him money; he made arrangements before he went that he would let us know from time to time where he was and that we should send him money from his own earnings; we did that at frequent intervals, once by postoffice order and the rest of the time

(Testimony of Schuyler C. Johnson.)
by bank draft. My son was 9 or 10 when we left Boston 14 years ago.

Cross-examination.

(By Mr. FALKNOR.)

My son was 9 or 10 years old when we left Boston.
[41]

Testimony of W. E. Worsham, for Defendant (Recalled).

W. E. WORSHAM, recalled on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. MEAKIM.)

I have been in the auto detail gathering up cars a number of years and gathered something like 55 in last December. There was nothing particularly suspicious looking about this Nash when I first saw it.

Thereupon the defense rested.

Thereupon the Government introduced the rebuttal.

Testimony of Mrs. Edna Holmes, for the Government (In Rebuttal).

Mrs. EDNA HOLMES, called as a witness on behalf of the Government in rebuttal, testified as follows:

Direct Examination.

(By Mr. FALKNOR.)

I knew Mrs. Johnson; she told me shortly after they returned from Seattle that the Nash car was

(Testimony of Mrs. Edna Holmes.)

purchased by money that she got from her father in Kentucky.

Cross-examination.

(By Mr. MEAKIM.)

She said her father had given her the money and they had bought the car. My husband is a city patrolman.

**Testimony of Burrell Johnson, in His Own Behalf
(Recalled).**

BURRELL JOHNSON, the defendant, recalled, testified in his own behalf as follows:

Direct Examination.

(By Mr. MEAKIM.)

The present Studebaker automobile which I have was bought on a bill of sale made by the Seattle Automobile Sales Company, dated March 9, 1922.

(Bill of sale received in evidence, and marked Defendant's Exhibit "C.")

Whereupon the testimony closed and both sides rested. [42]

Thereupon the defendant renewed the motion made at the close of the Government's case, for the reasons then given, and for the further reason the evidence was not sufficient to go to the jury and defendant further moved to strike any evidence and warn the jury against considering any testimony regarding his identification.

"The COURT.—I don't think the evidence as to identification amounts to anything; the other motions are denied."

To which ruling the defendant then and there excepted, which exception was allowed.

Argument of counsel to the jury being heard the Court thereupon instructed the jury as to the law and the premises to which no exceptions were taken. Whereupon the jury retired to deliberate upon their verdict.

Thereafter on the same day the said jury returned into court and rendered their verdict finding the defendant guilty as charged in the indictment.

Thereafter the defendant duly filed his written motion now on file herein praying that the verdict of the jury be set aside and a new trial granted him.

Thereafter and on June 16, 1922, the said motion came duly on for hearing before the Court, and after argument of counsel the Court denied said motion, to which ruling of the Court the defendant excepted, and his exception was by the Court allowed.

Whereupon the Court did pronounce sentence upon the said defendant that he be imprisoned in the United States penitentiary, McNeil's Island, Washington, for a period of two years.

And, now, in furtherance of justice, and that right may be done, the said defendant, Burrell Johnson, tenders and presents to the Court the foregoing as his bill of exceptions in the above entitled cause, and prays that the same may be settled and [43] allowed and signed and sealed by the Court and made a part of the record in this case.

R. J. MEAKIM,
Attorney for the Defendant.

Service of copy hereof acknowledged this 11th day of September, 1922.

THOS. P. REVELLE,

United States Attorney.

By E. D. DUTTON.

O. K.—JOHN A. FRATER,

Asst. U. S. Atty. [44]

The defendant, Burrell Johnson, having tendered and presented the foregoing as his bill of exceptions in this cause to the action of the Court, and in furtherance of justice and that right may be done him, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court, and made a part of the record herein, and the Court having considered said bill of exceptions, and all objections and proposed amendments made thereto by the Government, and being now fully advised, does now in furtherance of justice and that right may be done the defendant, sign, seal, settle and allow said bill of exceptions as the bill of exceptions in this cause, and does order that the same be made a part of the record herein.

The Court further certifies that each and all of the exceptions taken by the defendant, as shown in said bill of exceptions, were at the time same were taken, allowed by the Court.

The Court further certifies that said bill of exceptions contains all material matters and evidence material to each and every assignment of error made by the defendant and tendered and filed in Court in this cause with said bill of exceptions.

The Court further certifies that said bill of exceptions was filed and presented to the Court within the time provided by law, as extended by the orders of the Court heretofore made herein.

Done and ordered in open court, counsel for the Government and the defendant being now present, this 25 day of September, 1922.

F. H. RUDKIN,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sept. 27, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [45]

In the United States District Court, Western District of Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

BURRELL JOHNSON,
Defendant.

**Order Transmitting Original Exhibits to Circuit
Court of Appeals.**

Upon good cause shown it is hereby ORDERED, that there shall be forwarded by the clerk of this court to the Circuit Court of Appeals in the above-

entitled cause the original exhibits heretofore filed herein, as follows, to wit:

Exhibit No. 1—Bill of Sale.

Exhibit No. 4—Copy of License.

Exhibit "C"—Bill of Sale.

And that said exhibits need not be printed.

JEREMIAH NETERER,

U. S. District Judge.

O. K.—THOS. P. REVELLE.

JUDSON F. FALKNOR,

U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 2, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [46]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make a transcript of record on appeal to the Circuit Court of Appeals of the Ninth Circuit Court, in the above-entitled cause, and include therein the following:

Indictment.

Arraignment.

Plea.

Record for trial and empanelling jury.

Verdict.

Motion for new trial.

Hearing on motion for new trial.

Judgment and sentence.

Petition for writ of error.

Assignment of errors.

Order allowing writ of error and fixing supersedeas.

Supersedeas bond.

Order extending time for filing bill of exceptions.

Order extending time for filing bill of exceptions
and record.

Order extending time for filing bill of exceptions
and record.

Bill of exceptions.

Order to forward original exhibits.

Praecipe.

R. J. MEAKIM,

Attorney for Defendant. [47]

I waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing, as provided under rule 105, of this Court.

R. J. MEAKIM,

Attorney for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sept. 22, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [48]

In the United States District Court for the Western District of Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 48, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees

and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 107 folios at 15c.\$16.05

[49]

Certificate of Clerk to transcript of record,
4 folios at 15c.\$.60
Seal to said certificate'20
Certificate of Clerk to original exhibits, 3
folios at 15 cents.45
Seal to said certificate20

I hereby certify that the above cost for preparing and certifying record, amounting to \$17.50, has been paid to me by attorney for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 2d day of October, 1922.

[Seal]

F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [50]

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Writ of Error.

The United States of America,—ss.

The President of the United States of America, to
the Honorable Judges of the District Court of
the United States for the Western District of
Washington, Northern Division, GREETING:

Because in the record and proceedings as also in
the rendition of the judgment of a plea which is in
said District Court, before the Honorable Frank
Rudkin, between Burrell Johnson, the plaintiff in
error, and the United States of America, the de-
fendant in error, a manifest error hath happened to
the prejudice and great damage of Burrell Johnson,
plaintiff in error, as by his complaint and petition
herein appears, and we being willing that error, if
any hath been, should be duly corrected, and full
and speedy justice done to the party aforesaid in
this behalf, DO COMMAND YOU, if judgment be
therein given, that under your seal, distinctly and
openly, you send the record and proceedings with all
things concerning the same, to the United States

Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, together with this writ, so that you have the same at said City of San Francisco within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being then [51] and there inspected, said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States of America should be done in the premises.

WITNESS the Honorable HOWARD TAFT, Chief Justice of the United States, this 20th day of June, 1922, and the year of the Independence of the United States, one hundred and forty-fifth.

[Seal] F. M. HARSHBERGER,
Clerk of the District Court of the United States for
the Western District of Washington, Northern
Division.

Acceptance of service of within writ of error acknowledged this 24th day of June, 1922.

THOS. P. REVELLE,

C. P.

Attorney for Plaintiff. [52]

Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 24, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

United States District Court, Western District of
Washington, Northern Division.

No. 6630.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURRELL JOHNSON,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America to
the United States of America and to THOMAS
R. REVELLE, United States Attorney for the
Western District of Washington, Northern Di-
vision, GREETINGS:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth District at San Francisco
in the State of California within thirty (30) days
of the date hereof pursuant to a writ of error
signed in the clerk's office of the *of the* United States
District Court for the Western District of Wash-
ington, Northern Division, wherein Burrell John-
son is plaintiff in error and the United States of
America the defendant in error to show cause, if
any there be, why judgment in said writ of error
should not be corrected and speedy justice should
not be done to the party in that behalf.

WITNESS the hand and seal of the Honorable
FRANK H. RUDKIN, Judge of the District Court

of the United States for the Western District of Washington, Northern Division, this 16th day of June, 1922.

[Seal]

JEREMIAH NETERER,

U. S. District Judge.

Acceptance of service of the within citation on writ of error acknowledged this 16th day of June, 1922.

THOS. P. REVELLE.

By E. D. DUTTON. [53]

Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 16, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Endorsed]: No. 3931. United States Circuit Court of Appeals for the Ninth Circuit. Burrell Johnson, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Received October 5, 1922.

F. D. MONCKTON,

Clerk.

By Paul P. O'Brien,

Deputy Clerk.

Filed October 10, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.